

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No.: EB-FIELDSCR-13-00009579
Juan R. Nieves, Jr.	)	NAL/Acct. No.: 201432700001
	)	FRN: 0023056757
Summerfield, Florida	)	

**FORFEITURE ORDER**

**Adopted: January 22, 2014****Released: January 22, 2014**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Juan R. Nieves, Jr. for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).<sup>1</sup> The noted violations involved Mr. Nieves' operation of an unlicensed radio transmitter on the frequency 97.7 MHz in Summerfield, Florida.

**II. BACKGROUND**

2. On October 25, 2013, the Enforcement Bureau's Tampa Office (Tampa Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to Mr. Nieves for operating an unlicensed radio transmitter in Summerfield, Florida.<sup>2</sup> As reflected in the NAL, on May 24, May 30, June 14, and June 25, 2013, agents from the Tampa Office determined that an unlicensed radio station was operating on the frequency 97.1 MHz from a residence in Summerfield, Florida.<sup>3</sup> On June 25, 2013, agents from the Tampa Office inspected the unlicensed station and interviewed Mr. Nieves, who admitted to operating the station for over a year.<sup>4</sup>

3. In response to the NAL, Mr. Nieves apologized for violating the Act and requested reduction or cancellation of the proposed forfeiture.<sup>5</sup> He stated that he is an unemployed retired person who lives solely on social security and cannot afford to pay the \$15,000 proposed forfeiture.<sup>6</sup>

**III. DISCUSSION**

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Commission's rules (Rules),<sup>8</sup> and the *Forfeiture Policy Statement*.<sup>9</sup>

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Juan R. Nieves, Jr.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14683 (Enf. Bur. 2013) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

<sup>3</sup> *Id.* at 14683, paras. 2–3.

<sup>4</sup> *Id.* at 14683, para. 3.

<sup>5</sup> Letter from Juan R. Nieves, Jr. to Ralph Barlow, District Director, Tampa Office, South Central Region, Enforcement Bureau at 1 (received Nov. 22, 2013) (on file in EB-FIELDSCR-13-00009579) (NAL Response).

<sup>6</sup> *Id.*

<sup>7</sup> 47 U.S.C. § 503(b).

In examining Mr. Nieves' *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>10</sup>

5. We affirm the *NAL*'s finding that Mr. Nieves violated Section 301 of the Act.<sup>11</sup> Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>12</sup> It is undisputed that Mr. Nieves operated an unlicensed radio station for over a year on the frequency 97.7 MHz from a residence that he rented in Summerfield, Florida. Therefore, based on the evidence before us, we conclude that Mr. Nieves willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

6. In the *NAL Response*, Mr. Nieves also states that he is unable to pay the \$15,000 forfeiture.<sup>13</sup> With regard to an individual or entity's inability to pay claim, the Commission has determined that gross revenues are generally the best indicator of an ability to pay a forfeiture.<sup>14</sup> Based on the financial documents provided by Mr. Nieves, we find sufficient basis to reduce the forfeiture to \$1,500.<sup>15</sup> However, we caution Mr. Nieves that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>16</sup> We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.<sup>17</sup> Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Nieves' financial circumstances.

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<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> See *NAL* *supra* note 2.

<sup>12</sup> 47 U.S.C. § 301.

<sup>13</sup> *NAL Response* at 1.

<sup>14</sup> See *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

<sup>15</sup> This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 14. We note that Mr. Nieves may request to pay the \$1,500 in installments, if he is unable to pay the \$1,500 in one lump sum. See *infra* para. 10.

<sup>16</sup> See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

<sup>17</sup> *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Juan R. Nieves, Jr. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violations of Section 301 of the Act.<sup>18</sup>

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Order.<sup>19</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>20</sup> Juan R. Nieves, Jr. shall send electronic notification of payment to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made.

9. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>21</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>22</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>18</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

<sup>19</sup> 47 C.F.R. § 1.80.

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>22</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Juan R. Nieves, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau